

## **Chapter VI**

### **ASBESTOS**

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## **Section I**

### **INTRODUCTION**

The asbestos review was conducted on-site with EPA staff interviewing asbestos program staff and conducting file reviews.

A few weeks prior to the program review visit a questionnaire (see Appendix) was provided the MDNR asbestos program manager so the asbestos staff would be familiar with the information EPA would be asking about during the interview phase of the visit. The information gathered during the program review pertained to the areas of program operation, data management, and file review.

## **Section II**

### **PROGRAM OPERATION**

#### Non-notifiers

MDNR identifies non-notifiers in several ways. The most frequent method occurs when someone lodges a complaint with the APCP. Field investigators are dispatched to the site and conduct a field interview and investigation. The APCP receives three to four complaints per month. The majority of these complaints are referred to the appropriate MDNR Regional Office or local program. The APCP follows up on complaints referred to MDNR regional offices; however, follow-up with local programs is complicated by the absence of direct line authority. The APCP endeavors to ensure that all complaints are investigated.

Also, during routine field trips, APCP investigators may observe an activity (demolition, renovation or regular construction-related activities) at an unexpected location. Further investigation may uncover an ongoing asbestos project or demolition that was not properly notified.

The APCP encourages "courtesy" notifications for projects below the NESHAP thresholds. When time permits, investigators may visit non-regulated sites to ensure the quantities of

asbestos-containing material (ACM) were assessed correctly and are under the NESHAP thresholds.

#### Enforcement Response Policy

The APCP does not have a set penalty policy. Missouri Rule 10 CSR 10-6.230 does include a gravity-based penalty assessment matrix which applies generally to any enforcement actions pursued by the APCP. EPA recommends that the APCP develop an asbestos demolition/renovation penalty policy. Such a policy would benefit the regulated community and would minimize the perception that penalties are established arbitrarily.

#### **MDNR Response**

*We do not believe a formal penalty is necessary. Our penalties are consistent and fair. As noted in EPA comments, 10 CSR 10-6.230 includes a gravity-based assessment matrix with a potential range of penalty amounts.*

MDNR does not have a written policy governing the issuance of timely and appropriate enforcement actions. However, APCP management and the Missouri Air Conservation Commission do keep track of staff progress on case review and enforcement.

#### Civil Penalty Authority

Authority to assess civil penalties is contained in the Revised Statutes of Missouri (RSMo), Section 643.151, "Violations, Penalties, Notice - Civil Action - Offer of Settlement, Method - Disclosure of Confidential Information, Penalty." The maximum penalty assessment "... cannot exceed \$10,000 for each violation per day for each day, or part thereof, the violation continues to occur."

#### Other Enforcement Remedies

In accord with 10 CSR 10-6.230, conference, conciliation and persuasion (CC & P) is a process (either written, verbal, or a combination of both) used continuously by the APCP staff toward alleged violators to resolve the alleged violation and develop a

compliance plan. Other enforcement remedies utilized during CC&P includes: (1) suspension of all (or part of) a proposed penalty amount; (2) site remediation by the alleged violator; (3) requiring the alleged violator to attend specific training in order to obtain state asbestos certification; and, (4) in the case of improper burial of ACM, obtaining a deed restriction that becomes an attachment to the property deed.

#### NESHAP Category I nonfriable floor covering

The APCP agrees with EPA policy with regard to the removal of Category 1 nonfriable floor covering. If the material is in good condition and proper care is taken during the removal process, the removal is not considered a regulated project. The APCP has developed an informational handout dealing specifically with removal of nonfriable asbestos-containing materials, e.g., flooring, roofing, and siding materials.

#### Policy Determinations

The APCP maintains a copy of the EPA Applicability Determination Index. For the most current information, the APCP utilizes EPA's OECA Homepage available on the Internet. The APCP also maintains a policy notebook with sections dedicated to each of the program's units, e.g., permitting, enforcement, and planning. The APCP asbestos unit also maintains a policy folder specifically for asbestos-related issues.

### **Section III**

#### **DATA MANAGEMENT**

##### Case tracking

Field inspectors complete an inspection report for each NESHAP inspection conducted. Included with the report, is an invoice which assigns a specific invoice number to each inspection. These invoice numbers are entered in the database along with the project information contained in the notification.

In instances where violations are written, the inspector's report, a copy of the NOV and a copy of the inspection report

become integral parts of the case file. Any correspondence and/or phone conversations with the alleged violator also become part of the case file. After a settlement is reached, the Attorney General's Office (AGO) is notified and provided a copy of the case file. The AGO drafts and distributes the formal agreement, which is ultimately signed by all parties involved. After all signatures are completed, a copy of the fully executed agreement is returned to Enforcement for inclusion in the case file.

#### Data system

Asbestos-related information (project notifications, demolition notifications, contractor registration, individual certifications, etc.) are entered in a Paradox database program.

The current system is not compatible with either the regional offices or with the EPA National Asbestos Registry System (NARS).

EPA has worked with MDNR to develop a NARS-compatible data system, but, to date, no discernable progress has been made. EPA recommends that a NARS-compatible asbestos data system be developed and implemented.

#### **MDNR Response**

*We will continue to work toward this end, but given the low priority of asbestos in Region VII, we lack justification to elevate its priority level. As to the existing database, we have not yet seen a need to purge it, since the database is sufficiently robust to retain all past certification and registration data.*

Data on individual certifications and contractor registrations has not been purged since MDNR's asbestos programs were granted EPA approval (1994). The database also contains asbestos project information for the last three years. Older project data is transferred to floppy disks and retained indefinitely.

#### **Section IV**

#### **FILE REVIEW**

## Background

As a result of a court decision, Missouri's asbestos demo/reno rule was declared invalid on February 3, 1998, and the APCP could no longer enforce it. Moreover, the APCP could only enforce the federal asbestos NESHAP as it existed on July 1, 1988. Thus, the APCP could not enforce the most recent revisions to the NESHAP (promulgated on November 20, 1990).

Effective November 1, 1999, the state's asbestos NESHAP authority was updated to adopt EPA's 1990 revisions.

Although the state could have enforced the pre-1990 NESHAP between February 3, 1998, and October 30, 1999, there was considerable confusion and consternation given the legal issues associated with the court decision and MDNR's appeal. As a result, staff was discouraged from seeking penalties with asbestos enforcement actions. However, during this time period, the state referred numerous NESHAP cases to EPA for Federal enforcement action.

Now that the state's NESHAP authority has been updated and the court case has been settled, the APCP has begun to re-invigorate its asbestos enforcement program. During the on-site visit, the reviewer learned that several asbestos enforcement penalty actions were in progress.

## Results

The EPA reviewer examined 22 asbestos case files which had been closed recently, i.e., most of the violations had occurred in 1999. (See file review checklists in Appendices to this Chapter.) None of the enforcement actions included civil penalties. The completeness of the documentation in these files varied considerably. For example, of the 22 reports;

- 10 contained compliance inspection reports;
- 7 contained documentation as to whether the NESHAP threshold was met;
- 14 documented whether ACM was present (results of analysis);

9 contained photographs of the demo/reno site;  
4 documented whether the ACM was friable;  
2 contained a chronology of events.

EPA recommends that enforcement case file documentation be improved to fully support any enforcement action which might be taken, and any challenges which might result.

#### ***EPA Response***

*We believe our documentation is adequate, but we will strive to improve.*

The Kirksville Osteopathic College case was of particular concern. In this case, the amount of Category II ACM siding was documented to be above the NESHAP threshold (160 square feet). The removal work practices had caused the ACM to become friable.

In this instance, there was a substantive violation of the NESHAP emission control requirements and a potential threat to human health. MDNR closed the case because a registered asbestos contractor was hired and promptly cleaned up the friable ACM debris. EPA believes that a civil penalty action would have been appropriate given the gravity of the violation and the potential health risk.

The reviewer noticed that considerable staff effort is expended in enforcing MDNR's asbestos certification program which pertains to workers, inspectors, supervisors, air sampling professionals, management planners, and project designers. While this activity is beyond the scope of our review, EPA nonetheless commends MDNR for its effort. The state's certification program helps to ensure a properly trained and qualified work force and goes a long way toward minimizing the potential adverse health impacts of asbestos exposure.

EPA would like to recognize the efforts of Mr. Paul Jeffery, an inspector at the MDNR Jefferson City Regional Office. In conducting the file review, Mr. Jeffery's efforts to document violations and recommend appropriate enforcement actions were apparent in numerous instances.

#### ***MDNR Response***



*The APCP agrees with the EPA comments concerning Mr. Jeffery.*

## **Section V**

### **RECOMMENDATIONS**

- Develop an asbestos demolition/renovation penalty policy.

#### **MDNR Response**

*Do not agree as per previous comment on page 108.*

- Develop and implement a NARS-compatible asbestos data system.

#### **MDNR Response**

*Partially agree as per previous comment on page 110. Any funding and technical support Region VII might be able to provide would be very helpful in accomplishing this goal.*

- Ensure adequate enforcement case file documentation to fully support any potential enforcement actions, and any challenges which might result.

#### **MDNR Response**

*Agree as per previous comment on page 111.*

## **APPENDIX - Asbestos**

Program Review Criteria

File Review Checklists

